

**COX, WOOTTON, GRIFFIN,
HANSEN & POULOS LLP**
Gregory W. Poulos (SBN 131428)
Max L. Kelley (SBN 205943)
190 The Embarcadero
San Francisco, CA 94105
Telephone No.: 415-438-4600
Facsimile No.: 415-438-4601

LAW OFFICES OF RICHARD P. WAGNER
Richard P. Wagner (SBN 166792)
700 Oceangate, Suite 700
Long Beach, CA 90802
Telephone: (562) 216-2946
Facsimile: (562) 216-2960

Attorneys for Plaintiff
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.

Plaintiff,

vs.

BARRY COHEN, CHRIS COHEN (aka
CHRISTENE COHEN), *in personam* and
F/V POINT LOMA, Official Number
515298, a 1968 steel-hulled, 126-gross ton,
70.8- foot long fishing vessel, her engines,
tackle, furniture, apparel, etc., *in rem*, and
Does 1-10,

Defendants.

And Related Counterclaims

Case No.: CV 07-02952 WHA

**DECLARATION OF MAX L.
KELLEY IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANTS' APPLICATION FOR
REASONABLE ATTORNEYS' FEES**

Hon. William H. Alsup

I, Max L. Kelley, hereby declare:

1. I am an associate in the firm of Cox, Wootton, Griffin, Hansen & Poulos,
LLP, attorneys of record for Plaintiff Del Mar Seafoods, Inc. ("Del Mar"). I submit this

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS LLP

190 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4600
FAX 415-438-4601

DelMarSeafoods2594

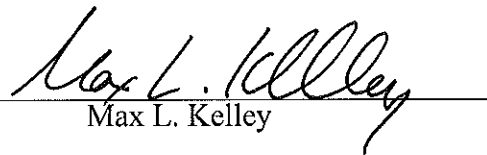
1 declaration in support of the plaintiff's Opposition to Defendants' Application for Reasonable
 2 Attorneys' Fees. I have personal knowledge of the facts stated below and if called to testify
 3 regarding those facts, I would and could competently testify thereto.

4 2. I have reviewed my firm's billing records for this matter and have created a
 5 table summarizing the hours and fees generated by myself and my supervising attorney and
 6 lead trial counsel, Gregory W. Poulos, as to specific legal work we have performed in
 7 furtherance of this litigation. I have also reviewed the defendants' Application for Attorneys'
 8 Fees and Costs and have generated tables of specific line items plaintiff is objecting to, and
 9 summaries of defendants' line items, where appropriate. The referenced tables are attached
 10 to this declaration as Exhibit 1.

11 3. Attached to this declaration as Exhibit 2 are true and correct copies of e-mails
 12 between myself and defense counsel G. Fanger leading up to our agreement to accept the
 13 service of each other's party-witness trial subpoenas on behalf of those witnesses.

14 4. On January 3, 2008 I attended the hearing in this Court on defendants' Motion
 15 for Protective Order regarding the deposition of defendant Chris Cohen. Attached to this
 16 declaration as Exhibit 3 is a true and correct copy of the transcript from that proceeding.

17
 18 I declare under penalty of perjury under the laws of the United States of America that
 19 the forgoing is true and correct. Dated July 28, 2008, at San Francisco, California.

20
 21
 22 
 23 Max L. Kelley

24
 25
 26 COX, WOOTTON,
 GRIFFIN, HANSEN
 & FOULOS LLP
 27 190 THE EMBARCADERO
 SAN FRANCISCO, CA
 94105
 TEL 415-438-6600
 FAX 415-438-6601
 28

DelMar Seafoods/2504

D. EXCESSIVE HOURS**PROJECT 16: DEPOSITION OF JOE CAPPUCCIO**

12/10/07	J. Walsh	Review matters regarding depositions (0.2); check rules (1.2); conference with G. Fanger regarding the same (0.1).	1.6	\$490.00	\$ 784.00
12/27/07	J. Walsh	Defend deposition of D. Cantrell.	8.0	490.00	3,920.00
Project sub-total:			9.6		\$4,704.00

PROJECT 24: PRETRIAL – DEFENDANTS' TRIAL BRIEF

12/13/07 to 4/28/08	G. Fanger	Various, including conduct legal research re parole evidence rule (G. Fanger: 1/30/08, 0.7; 2/1/08, 1.3); conduct legal research regarding parole evidence rule and outline issues for preparation of trial brief (G. Fanger: 2/4/08, 2.8); conduct legal research regarding parole evidence rule and promissory estoppel (G. Fanger: 2/5/08, 1.0).	47.5	275.00	\$16,317.50
	J. Walsh			350.00	

PROJECT 27: DEFENDANTS' MOTION IN LIMINE RE PAROL EVIDENCE

2/7/08 to 4/25/08	G. Fanger	Various, including conduct research regarding parole evidence rule (G. Fanger: 3/20/08, 0.7); legal research regarding parole evidence rule (G. Fanger: 3/24/08, 3.0).	28.6	350.00	\$10,078.00
	J. Walsh			520.00	

PROJECT 33: SETTLEMENT CONFERENCE

4/15/08	G. Fanger	Correspondence with Mrs. Cohen regarding availability for settlement conference (0.2); prepare settlement conference statement (5.1).	5.1	350.00	1,785.00
4/16/08	G. Fanger	Calls with J. Larson's clerks regarding scheduling settlement conference (0.2); prepare settlement conference statement (6.0).	6.0	350.00	2,100.00
4/17/08	G. Fanger	Prepare settlement statement (7.0); prepare application for appearance by phone at settlement conference (1.0).	7.0	350.00	2,450.00
4/18/08	G. Fanger	Prepare settlement statement (4.0); prepare application for appearance by phone at settlement conference (1.5); prepare declaration of Chris Cohen in support of application for appearance by phone (1.0)	4.0	350.00	1,400.00
4/18/08	J. Walsh	Edit settlement documents.	0.6	520.00	312.00
4/20/08	G. Fanger	Prepare settlement statement (1.0); application for appearance by phone (0.5); update declaration of Chris Cohen in support of application for appearance by phone (0.5).	1.0	350.00	350.00
4/21/08	G. Fanger	Confer with B. Walsh regarding settlement statement and trial matters (0.2); update settlement statement (0.2); correspondence with Mrs. Cohen regarding settlement statement and appearance at conference	0.4	350.00	140.00

①

EXHIBIT 1

(0.1).

4/21/08	J. Walsh	Conference with G. Fanger regarding trial preparation (0.2); settlement report edits (0.9) ; and communications with C. Cohen (0.1).	0.9	520.00	468.00
4/22/08	G. Fanger	Correspondence with Mr. Cohen regarding settlement statement (0.1); correspondence with Mrs. Cohen regarding settlement statement and appearance at conference (0.1).	0.2	350.00	70.00
4/22/08	J. Walsh	Telephone call from G. Fanger regarding settlement papers and damages (0.3).	0.3	520.00	156.00
4/23/08	G. Fanger	Correspondence with Mrs. Cohen regarding settlement conference (0.1); update settlement conference statement (2.1) .	2.1	350.00	735.00
4/23/08	J. Walsh	Review damage calculations (0.3); conference with G. Fanger regarding same (0.2).	0.5	520.00	260.00
4/24/08	G. Fanger	Update settlement conference statement regarding attorney's fees (1.5) ; correspondence with Mrs. Cohen regarding application for phone appearance at settlement conference (0.2); update settlement conference statement , application for phone appearance and declaration in support of application (2.5).	4.0	350.00	1,400.00
Project sub-total:			32.1		\$11,626.00

PROJECT 34: PREPARATION OF CROSS-EXAMINATION OF JOE ROGGIO**Prepare trial subpoena for J. Roggio:**

4/15/08	G. Fanger	Analyze rules regarding issuance of trial subpoena to Roggio.	0.2	350.00	70.00
5/2/08	G. Fanger	Prepare trial subpoena.	0.3	350.00	105.00
5/5/08	G. Fanger	Conduct legal research regarding service on trial subpoena on parties (3.0) ; prepare witness file (3.0); confer with B. Walsh regarding trial preparation (0.3); prepare trial subpoena (0.3) .	3.3	350.00	1,155.00
5/6/08	G. Fanger	Update trial subpoena for Roggio (0.3) ; prepare trial exhibits and witness folder for Roggio (1.5).	0.3	350.00	105.00
5/7/08	G. Fanger	Work on Roggio subpoena and send for service (0.5) ; prepare Roggio witness file (1.0).	0.5	350.00	175.00
Sub-project sub-total:			4.6		\$1,610.00

Prepare J. Roggio witness file/folder:

5/5/08	G. Fanger	Conduct legal research regarding service on trial subpoena on parties (3.0); prepare witness file (3.0) ; confer with B. Walsh regarding trial preparation (0.3); prepare trial subpoena (0.3).	3.0	350.00	1,050.00
5/6/08	G. Fanger	Update trial subpoena for Roggio (0.3) ; prepare trial exhibits and witness folder for Roggio (1.5) .	1.5	350.00	525.00

5/7/08	G. Fanger	Work on Roggio subpoena and send for service (0.5); prepare Roggio witness file (1.0).	1.0	350.00	350.00
5/9/08	G. Fanger	Review exhibits for witness folder for Roggio.	1.0	350.00	350.00
5/15/08	G. Fanger	Prepare witness folders for Roggio.	3.3	350.00	1,155.00
Sub-project sub-total:			9.8		\$3,430.00
Project sub-total:			14.4		\$5,040.00

PROJECT 35: PREPARATION FOR CROSS EXAM OF JOE CAPPUCCIO

4/15/08	G. Fanger	Analyze rules regarding issuance of trial subpoena to Cappuccio.	0.2	350.00	70.00
5/2/08	G. Fanger	Prepare trial subpoena.	0.3	350.00	105.00
5/5/08	G. Fanger	Prepare trial subpoena.	0.3	350.00	105.00
5/6/08	G. Fanger	Update trial subpoena for Cappuccio (0.3); prepare trial exhibits and witness files for Cappuccio (1.5).	0.3	350.00	105.00
5/9/08	G. Fanger	Update trial subpoena for Cappuccio and prepare for service (0.5); review exhibits for witness folder for Cappuccio (1.0).	0.5	350.00	175.00
Project sub-total:			1.6		\$560.00

PROJECT 41: DEFENDANTS' DAMAGE ANALYSIS**Prepare motion for travel expenses**

5/8/08	G. Fanger	Prepare damages exhibit of analysis (0.6); conduct legal research regarding travel expenses as damages (1.0).	1.0	350.00	350.00
5/9/08	G. Fanger	Conduct research regarding travel expenses as damages (2.4).	2.4	350.00	840.00
5/11/08	G. Fanger	Prepare memo regarding travel expenses.	0.7	350.00	245.00
5/12/08	G. Fanger	Prepare damages exhibit (2.5); prepare memo regarding travel expenses (2.5).	2.5	350.00	875.00
5/13/08	G. Fanger	Prepare memo regarding travel expenses and payments to captain.	3.4	350.00	1,190.00
Project total:			10.0		\$3,500.00

PROJECT 2: RELEASE OF VESSEL AND RELATED MOTIONS

7/18/08	J. Walsh	Telephone call from B. Cohen regarding nets.	0.2	490.00	98.00
7/20/08	J. Walsh	Telephone call from B. Cohen regarding net (0.3).	0.3	490.00	147.00

9/4/07	G. Fanger	Prepare letter to US Marshal regarding damages.	0.2	275.00	55.00
9/5/07	G. Fanger	Update letter to US Marshal regarding damages.	0.2	275.00	55.00
Project total:			0.9		\$355.00

DUPLICATIVE HOURS RESULTING FROM ATTENDANCE OF TWO ATTORNEYS

12/12/07 to 5/19/08	G. Fanger	Various, as described above, for Projects 20, 26, 31, 33, and 39.	16.1	275.00	\$5,522.00
				350.00	

TOTAL FOR ALL EXCESSIVE HOURS:	165.4	\$59,312.50
---------------------------------------	--------------	--------------------

E. DUPLICATIVE HOURS**PROJECT 20: DEPOSITION OF BARRY COHEN**

12/12/07	G. Fanger	Attend deposition preparation discussions with Mr. Cohen and B. Walsh.	1.5	275.00	\$412.50
----------	-----------	--	-----	--------	----------

PROJECT 26: OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

4/10/08	G. Fanger	Attend and take notes at summary judgment hearing.	4.5	\$350.00	1,575.00
---------	-----------	--	-----	----------	----------

PROJECT 31: PRETRIAL CONFERENCE

5/5/08	G. Fanger	Attend and participate in pretrial conference.	2.0	350.00	700.00
--------	-----------	--	-----	--------	--------

PROJECT 33: SETTLEMENT CONFERENCE

5/1/08	G. Fanger	Prepare for and participate in settlement conference.	3.1	350.00	1,085.00
--------	-----------	---	-----	--------	----------

PROJECT 39: PREPARE DIRECT EXAM OF BARRY COHEN

5/19/08	G. Fanger	Meet with B. Walsh and Mr. Cohen to prepare for Mr. Cohen's testimony.	5.0	350.00	1,750.00
---------	-----------	--	-----	--------	----------

TOTALS:			16.1		\$5,522.00
----------------	--	--	-------------	--	-------------------

F. UNNECESSARY AND UNRELATED LEGAL WORK

Revival of Defendant F/V Point Loma Fishing Co., Inc.'s corporate status

PROJECT 2: RELEASE OF VESSEL AND RELATED MOTIONS

7/12/07	G. Fanger	Conduct legal research regarding plea of abatement and lack of corporate capacity to bring motion (1.0); telephone conference with Mr. Cohen regarding status of corporate revivor application (0.2); telephone conference with Mr. Kennedy regarding status of corporate revivor application (0.3).	1.5	275.00	\$412.50
7/17/07	J. Walsh	Review email regarding revival of corporation.	0.2	490.00	98.00
7/19/07	J. Walsh	Review corporation reinstatement papers (0.2); draft letter regarding same (0.2)	0.4	490.00	196.00
8/1/08	G. Fanger	Conduct legal research regarding standing issues.	1.0	275.00	275.00
Project sub-total:			3.1		\$981.50

PROJECT 10: RESPOND TO PLAINTIFF'S DOCUMENT REQUESTS

12/13/07	G. Fanger	Conduct research regarding obligation to produce tax returns in discovery.	2.0	\$ 275.00	\$ 550.00
12/14/07	G. Fanger	Conduct research regarding obligation to produce tax returns in discovery.	1.0	275.00	275.00
1/22/08	G. Fanger	Review letter from Del Mar regarding discovery of tax schedules (0.1); prepare summary of remaining issues regarding tax schedules and Del Mar's supplemental disclosures (0.3).	0.4	350.00	140.00
1/23/08	G. Fanger	Correspondence with Mr. Poulos regarding requests for tax documents (0.2); review Del Mar's request to court for motion to compel production of tax schedules (0.2); prepare outline of response (0.7).	1.1	350.00	385.00
1/24/08	G. Fanger	Calls with Mr. Cohen regarding tax schedules (0.4); Call with Mr. Poulos regarding production of tax schedules (0.1); prepare response to court regarding production of tax schedules (2.0); prepare draft declaration for Mr. Cohen in support of response to request for tax schedules (0.7).	3.2	350.00	1,120.00
1/25/08	G. Fanger	Review tax schedules for response to Del Mar's discovery request (1.0); confer with J. Walsh regarding production of tax schedules (2.6); prepare response to Del mar regarding production of tax schedules (0.2); review Del Mar's additional request for tax documents (0.1); confer with Mr. Cantrell regarding additional summaries of tax schedules for 2004-2005 (0.4); review documents from Mr. Cantrell for response to Del Mar's request for additional tax documents (1.0); prepare response to Del Mar regarding production of additional summaries of tax documents (0.3).	5.9	350.00	2,065.00
Project sub-total:			13.6		\$4,535.00

PROJECT 19: PLAINTIFF'S DEPOSITION OF DAVE CANTRELL

12/20/07	G. Fanger	Conduct legal research regarding accountant and taxpayer privilege under federal and state laws.	2.0	\$ 275.00	\$ 550.00
12/26/07	G. Fanger	Conduct research regarding discoverability of tax returns (0.9); conduct research regarding disclosure of tax information by accountants (1.0); prepare summary of research (0.4).	2.3	275.00	632.50
<i>Project sub-total:</i>			4.3		\$1,182.50

TOTAL:		17.9		\$5,167.50
---------------	--	-------------	--	-------------------

PROJECT 15: DEFENDANTS' MOTION FOR PROTECTIVE ORDER RE DEPOSITON OF CHRIS COHEN (Summary)

11/26/07 to 1/23/08	G. Fanger J. Walsh	Various line items as set forth in defendants' Summary of Fees by Project, Project 15, all relating to defendants' improper motion for protective order.	35.0		\$11,681.00
---------------------------	-----------------------	--	-------------	--	--------------------

Erroneously included under PROJECT 16: DEPOSITION OF JOE CAPPUCCIO

12/26/07	G. Fanger	Analyze opposition for reply to motion for protective order.	0.3	275.00	82.50
12/27/07	J. Walsh	Prepare for discovery hearing (1.5); review new documents (0.3); respond to emails regarding discovery (0.2); telephone conference with B. Cohen regarding various issues (0.8).	2.0	490.00	980.00

<i>Project sub-total:</i>	2.3	\$1,062.50
---------------------------	------------	-------------------

TOTAL:	37.3	\$12,743.50
---------------	-------------	--------------------

PROJECT 43: DEPOSITION DESIGNATIONS FOR USE AT TRIAL

5/6/08	G. Fanger	Correspondence with Mrs. Cohen regarding potential appearance at trial and conflicts (0.4); conduct research rules for out of state subpoenas (2.5).	2.5	350.00	\$875.00
--------	-----------	--	-----	--------	----------

TOTAL FOR ALL UNNECESSARY HOURS:	75.6	\$24,877.50
---	-------------	--------------------

TOTAL FOR ALL EXCESSIVE HOURS	165.4	\$59,312.50
--------------------------------------	--------------	--------------------

TOTAL FOR ALL DUPLICATIVE WORK	16.1	5,522.00
---------------------------------------	-------------	-----------------

TOTAL FOR ALL UNNECESSARY HOURS:	75.6	24,877.50
---	-------------	------------------

GRAND TOTAL	257.1	\$89,712.00
--------------------	--------------	--------------------



"Fanger, Gwen"
<GwenFanger@dwt.co
m>

To: <mkelley@cwghp.com>
Subject: RE: Del Mar v. Cohen

05/06/2008 11:36 AM

Max,

We are not authorized to accept service of a trial subpoena on behalf of Chris Cohen. In the interest of saving some costs, our initial offer still stands that we are authorized to accept service for Barry if you can accept service for Joe Cappuccio and Joe Roggio. Please let me know by this afternoon.

Gwen

-----Original Message-----

From: mkelley@cwghp.com [mailto:mkelley@cwghp.com]
Sent: Monday, May 05, 2008 12:03 PM
To: Fanger, Gwen
Cc: Walsh, James; gpoulos@cwghp.com
Subject: RE: Del Mar v. Cohen

We have a deal if you are also authorized to accept service of a trial subpoena for Chris Cohen. Let me know.

Thank you.

Max L. Kelley
Attorney
Cox, Wootton, Griffin, Hansen & Poulos, LLP
190 The Embarcadero
San Francisco, CA 94105
Voice: (415) 438-4600 x214
Fax: (415) 438-4601
E-Mail: mailto:mkelley@cwghp.com
Website: http://www.cwghp.com

PRIVILEGE AND CONFIDENTIALITY NOTICE

The information in this electronic mail is intended for named recipients only. It may contain privileged or confidential matter. If you received this electronic mail in error, please notify the sender immediately by replying to this electronic mail or by collect telephone call to (415) 438-4600. Do not disclose the contents of this electronic mail to anyone.

"Fanger, Gwen"
<GwenFanger@dwt.co
m>

To:
cc: "Walsh, James"
<gpoulos@cwghp.com>

<mkelley@cwghp.com>
<budwalsh@dwt.com>,

EXHIBIT 2

05/05/2008 11:57 Subject: RE: Del Mar v.
Cohen
AM

Max,

We will be issuing trial subpoenas for Joe Cappuccio and Joe Roggio - we are authorized to accept service on behalf of Barry if you agree to accept service on behalf of both Joe Cappuccio and Joe Roggio as well.

Please let us know.

Thanks,
Gwen

-----Original Message-----

From: mkelley@cwghp.com [mailto:mkelley@cwghp.com]
Sent: Monday, May 05, 2008 11:16 AM
To: Fanger, Gwen
Cc: Walsh, James; gpoulos@cwghp.com
Subject: RE: Del Mar v. Cohen

Hi Gwen,

We are issuing a trial subpoena for Barry Cohen. Are you authorized to accept service on his behalf?

Thanks.

Max L. Kelley
Attorney
Cox, Wootton, Griffin, Hansen & Poulos, LLP
190 The Embarcadero
San Francisco, CA 94105
Voice: (415) 438-4600 x214
Fax: (415) 438-4601
E-Mail: mailto:mkelley@cwghp.com
Website: http://www.cwghp.com

PRIVILEGE AND CONFIDENTIALITY NOTICE

The information in this electronic mail is intended for named recipients only. It may contain privileged or confidential matter. If you received this electronic mail in error, please notify the sender immediately by replying to this electronic mail or by collect telephone call to (415) 438-4600. Do not disclose the contents of this electronic mail to anyone.

PAGES 1 - 5

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

DEL MAR SEAFOODS, INC.,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. C 07-2952 WHA
)	
BARRY COHEN, CHRIS COHEN (AKA)	
CHRISTENE COHEN), IN PERSONAM AND,)	
F/V POINT LOMA, OFFICIAL NUMBER)	
515298, A 1968 STEEL-HULLED, 126)	
GROSS TON, 70.8 FOOT LONG FISHING)	
VESSEL, HER ENGINES, TACKLE,)	
FURNITURE, APPAREL, ETC., IN REM,)	
AND DOES 1-10,)	
)	SAN FRANCISCO, CALIFORNIA
DEFENDANTS.)	THURSDAY
)	JANUARY 3, 2008
)	

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF COX, WOOTTON, GRIFFIN, HANSEN & POULOS
190 THE EMBARCADERO
SAN FRANCISCO, CALIFORNIA 94105
BY: GREGORY W. POULOS, ESQUIRE
MAX L. KELLEY, ESQUIRE

FOR DEFENDANT DAVIS, WRIGHT, TREMAINE
505 MONTGOMERY STREET
SUITE 800
SAN FRANCISCO, CALIFORNIA 94111
BY: JAMES P. WALSH, ESQUIRE

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
OFFICIAL COURT REPORTER, U.S. DISTRICT COURT

JOAN MARIE COLUMBINI, CSR, RPR
OFFICIAL COURT REPORTER, USDC, 415-255-6842

EXHIBIT 3

PROCEEDINGS; THURSDAY, JANUARY 3, 2008

THE CLERK: THE CASE NO. IS 07-2952, DEL MAR SEAFOOD
VERSUS BARRY COHEN.

MR. POULOS: GOOD MORNING, YOUR HONOR. GREGORY
POULOS AND MAX KELLEY APPEARING FOR DEL MAR SEAFOODS.

MR. WALSH: JAMES WALSH, YOUR HONOR, FOR THE
DEFENDANTS BARRY AND CHRISTENE COHEN.

THE COURT: ALL RIGHT. WE ARE HERE ON A MOTION FOR
PROTECTIVE ORDER CONCERNING DISCOVERY, AND I ASKED YOU IN AN
ORDER YESTERDAY TO BRING THE DISCLOSURE AND RULE 26. DID
ANYBODY DO THAT?

MR. POULOS: YES, YOUR HONOR. WE BROUGHT -- THERE
ARE TWO DISCLOSURES AT ISSUE. THE FIRST ONE IS AN AUGUST 21,
2007 LETTER, SIGNED BY MS. GWEN FANGER OF DAVIS, WRIGHT
TREMAINE, AND I BROUGHT THE ORIGINAL OF THAT.

WE ALSO BROUGHT ANOTHER COPY OF THE SUBSEQUENT
SECOND INITIAL DISCLOSURE, AMENDED DISCLOSURE, DATED SEPTEMBER
5TH, 2007. WE HAVE THE COPY OF THAT, BECAUSE IT'S A RULE 26
DISCLOSURE, AND I DID ASK THE DEFENSE COUNSEL TO BRING THE
ORIGINAL OF THAT.

THE COURT: LET ME SEE BOTH OF THE ONES YOU BROUGHT.
THESE BOTH SEEM TO DISCLOSE MS. CHRISTENE COHEN AS A
WITNESS THAT THE DEFENDANTS MAY RELY UPON, SO WHY SHOULDN'T
THEY BE ALLOWED TO TAKE HER DEPOSITION?

1 **MR. WALSH:** YOUR HONOR.

2 **THE COURT:** WAIT. LET ME ASK IT MORE PRECISELY.

3 YOU DISCLOSED THEM. YOU MUST HAVE HAD A GOOD
4 REASON. HOW COULD YOU POSSIBLY TAKE THE POSITION THAT THEY
5 CAN'T DEPOSE ONE OF YOUR WITNESSES THAT YOU DISCLOSED?

6 **MR. WALSH:** YOUR HONOR, IN THE DISCLOSURE WE
7 IDENTIFIED MRS. COHEN AS AN INDIVIDUAL WHO WOULD BE -- WHO WAS
8 LIKELY TO HAVE DISCOVERABLE INFORMATION ABOUT THE CASE. WE
9 KNEW THAT SHE'D SIGNED A NOTE.

10 WE THEN CONDUCTED ADDITIONAL DISCOVERY. WE
11 DISCOVERED, IN PARTICULAR BECAUSE OF THE DEPOSITION OF
12 MR. POULOS' CLIENTS THAT THEY HAD NO BUSINESS DEALINGS WITH
13 CHRIS COHEN. SHE SIGNED A NOTE. SHE SIGNED A MORTGAGE. BUT,
14 OTHERWISE, DID NOT PARTICIPATE IN ANY OF THE BUSINESS DEALINGS
15 BETWEEN THE PARTIES.

16 THEREFORE, WITH RESPECT -- AND WE DON'T PLAN TO CALL
17 HER AS A WITNESS IN THE CASE, YOUR HONOR. WE ARE GOING -- WE
18 STIPULATE SHE SIGNED THE DOCUMENT. WE STIPULATE THAT SHE
19 SIGNED THE MORTGAGE AND THAT SHE WAS A -- THAT SHE'S A PART
20 OWNER OF THE VESSEL IN THE CORPORATION.

21 BUT THE CENTRAL ISSUES IN THIS CASE, YOUR HONOR,
22 HAVE TO DO WITH ORAL DEALINGS WITH RESPECT TO THE NOTE, WHETHER
23 ADDITIONAL -- WHETHER ADDITIONAL OBLIGATIONS WERE ADDED TO THE
24 NOTE BY THE PARTIES. AND THE DEPOSITIONS MADE VERY CLEAR THAT
25 HIS CLIENTS NEVER DEALT WITH MS. COHEN. SHE HAD NOTHING TO

1 OFFER IN THAT REGARD, AND WE DON'T PLAN TO CALL HER AS A
2 WITNESS.

3 **THE COURT:** YOU DON'T PLAN TO. YOU ARE NOT SAYING
4 YOU NEVER WILL.

5 **MR. WALSH:** I WILL STIPULATE --

6 **THE COURT:** CLAIMS CHANGE. I HAVE LEARNED THE HARD
7 WAY IN THIS JOB. LAWYERS TELL ME ALL THE TIME THEY DON'T PLAN
8 TO DO SOMETHING, THE NEXT WEEK THEY CHANGE THEIR MIND, JUST
9 LIKE YOU PLANNED TO USE HER AS A WITNESS WHEN YOU DISCLOSED
10 HER.

11 LISTEN, THIS IS EASY. THEY ARE GOING TO BE ALLOWED
12 TO TAKE HER DEPOSITION. YOU SHOULD NEVER HAVE BROUGHT THIS
13 MOTION. I AM HANDING THESE DOWN. YOU DISCLOSED HER AS A
14 WITNESS. SHE'S A DEFENDANT IN THE CASE. AND BOTH SIDES HAVE A
15 RIGHT TO GET AT THE TRUTH, AND I'M VERY SUSPICIOUS OF YOUR
16 MOTIVES HERE.

17 YOU'RE WILLING TO GO DOWN TO PHOENIX, RIGHT?

18 **MR. POULOS:** YES, WE ARE.

19 **THE COURT:** YOU GO DOWN THERE AND TAKE HER
20 DEPOSITION ON THE DAY DESIGNATED.

21 IF THERE'S MONKEY BUSINESS OVER PRIVILEGES, YOU
22 BETTER BE RIGHT ON EVERY ASSERTION OF THE PRIVILEGE; OTHERWISE,
23 YOU ARE GOING TO PAY FOR THEM TO GO BACK AND DO IT AGAIN. IT
24 SOUNDS LIKE YOU'RE TRYING TO COVER SOMETHING UP HERE. THAT'S
25 THE AROMA THAT COMES OUT OF THIS.

1 THEY ARE WILLING TO GO DOWN THERE AT THEIR EXPENSE
2 AND DEPOSE HER WHERE SHE LIVES FOR ONE DAY. THAT'S VERY
3 REASONABLE. SHE IS A DEFENDANT IN THIS CASE. YOU DISCLOSED
4 HER. NOW YOU'RE TRYING TO GET OUT OF THE DISCLOSURE FOR
5 REASONS I DON'T FULLY UNDERSTAND AND DON'T NEED TO. ALL I KNOW
6 IS WHEN SOMEBODY DISCLOSES A WITNESS, YOU HAVE GOT TO HAVE A
7 VERY GOOD REASON TO WITHDRAW THAT DISCLOSURE AND TRY TO STOP
8 THE DEPOSITION. HERE YOU DON'T HAVE A VERY GOOD REASON. I AM
9 NOT SURE YOU HAVE A REASON AT ALL THAT HOLDS UP.

10 ANYWAY, THE MOTION FOR PROTECTIVE ORDER IS DENIED.
11 I WANT THAT DEPOSITION TO GO FORWARD ON TIME. AND IF THERE'S
12 ANY PROBLEM WITH A WRONGFUL ASSERTION OF PRIVILEGE, YOU COME
13 BACK HERE WITH A NEW MOTION, AND WE'LL SORT IT OUT.

14 **MR. POULOS:** THANK YOU, YOUR HONOR.

15 **THE COURT:** ALL RIGHT. MOTION IS OVER.

16 (PROCEEDINGS ADJOURNED.)
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C 07-2952 WHA, DEL MAR SEAFOODS V. BARRY COHEN, ET AL., WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

JOAN MARIE COLUMBINI, CSR 5435, RPR

MONDAY JULY 21ST, 2008